

1 Scott Edward Cole, Esq. (S.B. #160744)  
2 Laura Van Note Esq. (S.B. #310160)  
**COLE & VAN NOTE**  
3 555 12<sup>th</sup> Street, Suite 2100  
4 Oakland, California 94607  
5 Telephone: (510) 891-9800  
6 Facsimile: (510) 891-7030  
7 Email: sec@colevannote.com  
8 Email: lvn@colevannote.com

9 Gary M. Klinger, Esq. (*Pro hac vice*)  
10 John Nelson, Esq. (SBN 317598)  
11 **MILBERG COLEMAN BRYSON**  
12 **PHILLIPS GROSSMAN, PLLC**  
13 221 W Monroe Street, Suite 2100  
14 Chicago, Illinois 60606  
15 Telephone: (866) 252-0878  
16 Email: gklinger@milberg.com  
17 Email: jnelson@milberg.com

18 *Plaintiffs' Interim Co-Lead Class Counsel*

19 *Additional Counsel Listed on the Signature Page*

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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

JOHN PRUTSMAN, AMIRA MARTZ, : Case No. 3:23-cv-01131-RFL  
SIMCHA RINGEL, NAIOMI MARDEN, :  
ALANA BALAGOT, CORRINE :  
WARREN, SUNNY LAI, and DAVID :  
KLEIN, individually and on behalf of all :  
others similarly situated, :  
Plaintiffs, :  
vs. :  
NONSTOP ADMINISTRATION AND :  
INSURANCE SERVICES, INC., inclusive, :  
Defendant. :  
vs. :  
JOHN DOE :  
:

**CLASS ACTION**  
**JOINT CASE MANAGEMENT**  
**STATEMENT**

Judge Hon. Rita Lin

1	and CONOR BRIANFITZPATRICK,	:
2	a/k/a "Pompompurin"	:
3	Third-Party Defendants	:
4		:

5 Pursuant to Rules 16 and 26(f) of the Federal Rules of Civil Procedure and Northern  
 6 District of California Civil Local Rule 16-9, Plaintiffs John Prutsman, Amira Martz, Simcha  
 7 Ringel, Naomi Marden, Alana Balagot, Sunny Lai, Corinne Warren and David Klein (collectively,  
 8 "Plaintiffs") and Defendant Nonstop Administration and Insurance Services, Inc. ("Defendant")  
 9 jointly submit this Case Management Statement and discovery plan in advance of this Court  
 10 issuing a new Case Management Order, per the new assignment to the Honorable Rita Lin. *Pro se*  
 11 Third Party Defendant Conor Brian Fitzpatrick ("Third Party Defendant") was re-arrested on or  
 12 about January 2, 2024 for violating the conditions of his supervised release. Accordingly, Third  
 13 Party Defendant could not be consulted for purposes of this Joint Case Management Statement.

14 The Parties filed a Joint Case Management Statement on December 11, 2023 (ECF No.  
 15 67). On December 15, 2023 a Clerk's Notice was issued setting a Case Management Conference  
 16 for January 24, 2024, and directing the Parties to file a Joint Case Management Statement that  
 17 includes "(1) a joint proposed schedule through class certification, with the hearing on the class  
 18 certification motion in December 2024; (2) a discovery cutoff; and (3) a proposed form of ADR  
 19 and deadline for completing ADR" (ECF No. 69). The Parties submit this Joint Case Management  
 20 Statement in conformity with the Clerk's Notice re-setting the Case Management Conference. Per  
 21 the discussion of counsel, the Parties respectfully request the Court instate the joint scheduling  
 22 deadlines articulated in the Joint Case Management Statement filed on December 11, 2023 (ECF  
 23 No. 67).

24 **I. JURISDICTION AND SERVICE**

25 **JOINT POSITION**

26 The Parties contend that jurisdiction is proper under 28 U.S.C. §1332(d) and 28 U.S.C. §  
 27 1367. The Parties also contend that the Court's exercise of personal jurisdiction over Defendant is  
 28 proper, as Defendant maintains its principal place of business within this District. Supplemental

COLE & VAN NOTE  
ATTORNEYS AT LAW  
555 12TH STREET, SUITE 2100  
OAKLAND, CA 94607  
TEL: (510) 891-9300

1 jurisdiction to adjudicate issues pertaining to state law is proper in this Court under 28 U.S.C. §  
 2 1367. Venue is proper in this Court under 28 U.S.C. § 1391 and Local Rule 3-2(c). No issues exist  
 3 regarding personal jurisdiction or venue. By Order of Court, Plaintiffs filed a Consolidated Class  
 4 Action Complaint (“CAC”) on May 25, 2023.

5 **II. FACTS**

6 **PLAINTIFFS’ POSITION**

7 Defendant Nonstop is a privately held employee health insurance and benefits broker and  
 8 as a necessary part of its regular business activities, Defendant collects and maintains sensitive  
 9 consumer information, including personally identifiable information (“PII”) and protected health  
 10 information (“PHI”). On December 22, 2022, Defendant learned that a third party had accessed  
 11 the network in which it stored the PII and PHI of consumers nationwide and exfiltrated the data  
 12 stored within (the “Data Breach”). The information compromised in the Data Breach included  
 13 names, dates of birth, physical and email addresses, telephone numbers, Social Security numbers,  
 14 medical treatment/diagnosis information and health insurance providers, and claims and billing  
 15 information (the “Private Information”). Following the Data Breach, a hacking forum reported that  
 16 45,532 lines of data stolen from Defendant were posted online by cybercriminals to demonstrate  
 17 they had successfully exfiltrated data from Defendant’s network. Plaintiffs were among the  
 18 individuals whose data was accessed in the Data Breach. Plaintiffs began receiving notice of the  
 19 Data Breach beginning in February and March of 2023.

20 Plaintiffs allege that Defendant was aware of the threat of cyberattacks designed to gain  
 21 access to personal information, yet it failed to properly implement and maintain adequate data  
 22 security policies and procedures. Plaintiffs further allege that, Defendant had a duty under common  
 23 law and state and federal statutes to implement reasonable safeguards but failed to adhere to that  
 24 duty, and that Defendant failed to promptly and adequately notice Plaintiffs and Class Members  
 25 of the Data Breach. Plaintiffs allege that as a result of the Data Breach, they experienced fraudulent  
 26 transactions, attempts by cybercriminals to open accounts using their information, drops in their  
 27 credit score, lost time mitigating the consequences of the Data Breach, their Private Information  
 28 being published on the dark web, and a corresponding invasion of their privacy and property rights.

COLE & VAN NOTE  
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OAKLAND, CA 94607  
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 555 12TH STREET, SUITE 2100  
 OAKLAND, CA 94607  
 TEL: (510) 891-9800

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## **DEFENDANT'S POSITION**

On December 22, 2022, Nonstop Administration and Insurance Services ("Nonstop") received an anonymous email from a threat actor. The unknown actor claimed that he had gained access to Nonstop's information systems and stolen an unspecified amount of data. Nonstop immediately launched an investigation with the assistance of counsel and independent digital forensic specialists. Nonstop's investigation of the breach and subsequent review of data was completed on January 30, 2023. On February 3, 2023, Nonstop announced the breach on its website. On the same date, Nonstop notified all relevant employer groups of the breach. Individual consumers were notified on February 15, 2023.

At the time of the breach, Nonstop had comprehensive security policies and procedures. All sensitive information was encrypted at rest and subject to endpoint detection and response with full audit logs. Nonstop also participated in annual audits; the most recent of which occurred in June of 2022. The audit made recommendations for improvements, the only recommendation of which possibly relates to Nonstop is more frequent rotation of keys. Nonstop was in the process of implementing all recommendations at the time of the breach. Since the occurrence of the breach, Nonstop has further enhanced its security. Nonstop has retired its previous NSE production environment. Nonstop has rotated its database, cloud services, and access keys and forced password resets for internal Google access. Nonstop has implemented active security monitoring across all relevant accounts and networks. Nonstop has further created a new NSE administrative environment in a separate AWS account and implemented a Web Application Firewall on said environment and limited access exclusively to its corporate VPN; this VPN may only be accessed on company-owned machines. Nonstop uses new frameworks for securing application secrets and is rewriting applications to use password-less frameworks for database access. Moreover, Nonstop is refactoring document storage to preserve encryption at rest as well as during transport.

## **III. LEGAL ISSUES**

### **PLAINTIFFS' POSITION**

Plaintiffs believe the key legal issues include:

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- 1           • Whether Defendant had a legal duty to Plaintiffs and the Class to exercise due care
- 2           in collecting, storing, using and/or safeguarding their PHI/PII;
- 3           • Whether Defendant knew or should have known of the susceptibility of its data
- 4           security systems to a data breach;
- 5           • Whether Defendant's security procedures and practices to protect its systems were
- 6           reasonable in light of the measures recommended by data security experts;
- 7           • Whether Defendant's failure to implement adequate data security measures allowed
- 8           the Data Breach to occur;
- 9           • Whether Defendant failed to comply with its own policies, applicable laws
- 10          regulations, and industry standards relating to data security;
- 11          • Whether Defendant adequately, promptly and accurately informed Plaintiffs and
- 12          Class Members that their PHI/PII had been compromised;
- 13          • How and when Defendant actually learned of the Data Breach;
- 14          • Whether Defendant's conduct, including its failure to act, resulted in or was the
- 15          proximate cause of the breach of its systems, resulting in the loss of the PHI/PII of
- 16          Plaintiffs and Class Members;
- 17          • Whether Defendant adequately addressed and fixed the vulnerabilities which
- 18          permitted the Data Breach to occur; and
- 19          • Whether Defendant engaged in unfair, unlawful or deceptive practices by failing to
- 20          safeguard the PHI/PII of Plaintiffs and Class Members.

**DEFENDANT'S POSITION**

Nonstop denies any and all allegations in the CAC, as at all relevant times, Nonstop had reasonable security measures in place and was a victim of a criminal act by a threat actor, who is awaiting sentencing for his actions. Defendant Conor Brian Fitzpatrick has been joined as a Defendant in this matter on November 22, 2023. Service was successfully effectuated on him on November 23, 2023.

At all times, to the extent that Nonstop owed any statutory, contractual, or common law duties to Plaintiffs, Nonstop acted in accordance with all such duties. At the time of the purported

1 breach, Nonstop employed reasonable security policies, procedures, and controls in accordance  
 2 with industry standards. Plaintiffs will further be unable to prove any discernible damages  
 3 proximately caused by any act or omission of Nonstop. Finally, the security policies and controls  
 4 put in place at Nonstop subsequent to the subject incident are far above and beyond industry  
 5 standards and common practices.

6       **Each Party reserves the right to supplement this list.**

7       **IV. MOTIONS**

8       On March 29, 2023, Plaintiffs John Prutsman and Sonny Lai filed an Administrative  
 9 Motion to Consider Whether Cases Should Be Related and stipulated to relate *John Prutsman v.*  
 10 *Nonstop Administration and Insurance Services, Inc.*, Case No. 3:23-cv-01131 (filed March 13,  
 11 2023) (“*Prutsman*”) and *Sunny Lai v. Nonstop Administration and Insurance Services, Inc.*, Case  
 12 No. 3:23-cv-01323-LB (filed March 21, 2023) (“*Lai*”). Plaintiffs Prutsman and Lai also jointly  
 13 moved the Court for an Order consolidating the cases and appointing as interim lead counsel Gary  
 14 M. Klinger of Milberg Coleman Bryson Phillips Grossman PLLC, and Scott Edward Cole of Cole  
 15 & Van Note. ECF No. 11. On May 4, 2023, the Court granted the motion to consolidate and  
 16 appointed lead counsel and ordered *Lai* and *Warren* consolidated into *Prutsman*, the first filed  
 17 case. ECF Nos. 25-26.

18       On May 9, 2023, the Parties stipulated that Plaintiffs would file a Consolidated and  
 19 Amended Complaint no later than May 25, 2023 and Defendant would file any response thereto  
 20 on or before June 15, 2023. ECF No. 27. The Parties further agreed that, if warranted, Plaintiffs  
 21 would respond in opposition by July 20, 2023, and oral argument would be heard on July 27, 2023.  
 22 ECF No. 27. Plaintiffs filed their Consolidated and Amended Complaint on May 25, 2023 and  
 23 Defendant filed its Motion to Dismiss the Complaint on June 15, 2023. ECF Nos. 38-39. Plaintiffs  
 24 responded with their Opposition filed on July 6, 2023. ECF No. 41

25       On July 7, 2023, Defendant filed a Notice of Removal for *Nicholson v. Nonstop*  
 26 *Administration and Insurance Services*. ECF. 42. Additionally, Defendant filed its Reply in  
 27 Support of the Motion to Dismiss on July 13, 2023. ECF. 43

28

1       As discussed below, the parties will meet and confer about electronically stored  
 2 information (“ESI”), including the appropriate scope of preservation for ESI, and will submit a  
 3 stipulation on the subject.

4                   **PLAINTIFFS’ POSITION**

5       Plaintiff anticipates filing a Motion for Class Certification after the completion of  
 6 necessary fact and expert discovery.

7                   **DEFENDANT’S POSITION**

8       Defendant anticipates filing a Motion for Summary Judgment after the completion of  
 9 necessary fact and expert discovery. Defendant anticipates filing a *Daubert* Motion in the  
 10 anticipation that Plaintiffs will proffer an expert or experts. Nonstop further anticipates that it will  
 11 oppose Plaintiffs’ Motion for Class Certification.

12      **V. AMENDMENT OF PLEADINGS**

13       Defendant reserves the right to add additional parties as additional defendants,  
 14 should investigation and discovery reveal new information.

15      **VI. EVIDENCE PRESERVATION**

16       The Parties have reviewed the Court’s Guidelines Relating to the Discovery of  
 17 Electronically Stored Information and, as set forth below, have met and conferred on the issue,  
 18 understand their obligations regarding preservation of evidence and are complying with them. The  
 19 Parties have retained relevant documents and evidence in their possession, custody or control,  
 20 including, *inter alia*, documentary evidence. The Parties have been further advised to instruct any  
 21 third-party vendors, consultants and/or representatives to preserve evidence. The Parties will  
 22 continue to meet and confer about production of ESI to the extent necessary.

23      **VII. DISCLOSURES**

24       The Parties have exchanged Initial Disclosures.

25      **VIII. DISCOVERY**

26       Plaintiffs served Nonstop with Interrogatories and Request for Production of Documents.  
 27 Defendant Nonstop timely responded and produced discovery responses. Defendant Nonstop  
 28 intends to serve all putative Plaintiffs with Interrogatories and Request for Production of

1 Documents. The Parties intend to continue to engage in discovery, upon execution of a Protective  
 2 Order, and upon approval of said Protective Order by this Court.

3 **PLAINTIFFS' POSITION**

4 Plaintiffs believe that a longer discovery phase than that contemplated by the Court's  
 5 Standing Order for Civil Cases is warranted here as data breach cases involve intensive expert  
 6 investigation and iterative discovery efforts. Plaintiffs anticipate that the scope of discovery will  
 7 include (i) the nature and scope of the Data Breach, (ii) efforts to prevent or contain the Data  
 8 Breach or similar cyber intrusions, (iii) how the Data Breach occurred, (iv) persons and entities  
 9 who could have prevented the Data Breach and Defendant's data security practices and training  
 10 regimen, (v) the investigation of and response to the Data Breach, (vi) the victims of the Data  
 11 Breach and (vii) the distribution of Data Breach victims' Private Information on the dark web and  
 12 other criminal marketplaces.

13 **DEFENDANT'S POSITION**

14 Discovery has commenced. Defendant requests a longer discovery phase than that  
 15 contemplated by the Court's Standing Order for Civil Cases is warranted here as data breach cases  
 16 involve intensive expert investigation and iterative discovery efforts. Defendant anticipates that  
 17 the scope of discovery will include (i) the nature and scope of the Data Breach, (ii) efforts to  
 18 prevent or contain the Data Breach or similar cyber intrusions, (iii) how the Data Breach occurred,  
 19 (iv) Defendant's reasonable data security practices and training regimen, (v) the investigation of  
 20 and response to the Data Breach, (vi) the victims of the Data Breach, including any and all  
 21 purported damages alleged, including, but not limited to steps taken to monitor personal  
 22 information, medical history and records of anxiety and stress before and subsequently cause by  
 23 the breach and (vii) expert reports and depositions as to negligence, causation, and damages.

24 At this time, the Parties believe the default discovery limitations under the Federal Rules  
 25 of Civil Procedure suffice but reserve the right to request additional discovery as needed.

26 The Parties will meet and confer over the form of a proposed stipulated protective order  
 27 and proposed stipulated ESI protocol. The Parties do not anticipate any disputed issues involving  
 28 ESI but will meet and confer should the production of electronic data, or the method of such

COLE & VAN NOTE  
ATTORNEYS AT LAW  
555 12TH STREET, SUITE 2100  
OAKLAND, CA 94607  
TEL: (510) 891-9300

1 production, become issues. Parties agree to meet and confer about rolling discovery of ESI, over  
 2 the course of discovery.

3 **IX. CLASS ACTIONS**

4 **PLAINTIFFS' POSITION**

5 Plaintiffs bring this action pursuant to Rules 23(b)(2) and 23(b)(3) of the Federal Rules of  
 6 Civil Procedure on behalf of themselves and a nationwide class of similarly situated individuals.  
 7 Plaintiffs also seek to represent state subclasses on behalf of residents of Alaska, California,  
 8 Colorado and New York. Plaintiffs intend to seek class certification after the completion of  
 9 necessary fact and expert discovery.

10 **DEFENDANT'S POSITION**

11 Nonstop intends to oppose class certification at the appropriate time. The Parties have  
 12 proposed a schedule for briefing class certification below in Section 16.

13 The Parties have reviewed and are familiar with this District's Procedural Guidance for  
 14 Class Action Settlements.

15 **X. RELATED CASES**

16 None at this time.

17 **XI. RELIEF**

18 **PLAINTIFFS' POSITION**

19 Plaintiffs, on behalf of themselves and the Class and Subclasses, seek declaratory and  
 20 injunctive relief to protect the Private Information that remains in the hands of Defendant  
 21 following the Data Breach, statutory damages under the California Confidentiality of Medical  
 22 Information Act, Cal. Civ. Code § 56, *et seq.*, California Consumer Privacy Act, Cal. Civ. Code  
 23 §§ 1798.100, *et. seq.*; Alaska Personal Information Protection Act, Alaska Stat. §§ 45.48.010, *et*  
 24 *seq*; Alaska Consumer Protection Act, Alaska Stat. §§ 45.50.471, *et seq*; Colorado Consumer  
 25 Protection Act, Colo. Rev. Stat. §§ 6-1-101, *et seq.*; and New York General Business Law, N.Y.  
 26 Gen. Bus. Law §§ 349, *et seq.*, and damages flowing from Defendant's alleged negligence, breach  
 27 of implied contract, breach of fiduciary duty, and invasion of privacy. The precise calculation of  
 28 damages is subject to expert testimony and investigation.

COLE & VAN NOTE  
ATTORNEYS AT LAW  
555 12TH STREET, SUITE 2100  
OAKLAND, CA 94607  
TEL: (510) 891-9800

1           **DEFENDANT'S POSITION**

2           Defendant believes that Plaintiffs will be unable to prove statutory damages under the  
 3 California Confidentiality of Medical Information Act, Cal. Civ. Code § 56, *et seq.*, California  
 4 Consumer Privacy Act, Cal. Civ. Code §§ 1798.100, *et. seq.*; Alaska Personal Information  
 5 Protection Act, Alaska Stat. §§ 45.48.010, *et seq*; Alaska Consumer Protection Act, Alaska Stat.  
 6 §§ 45.50.471, *et seq*; Colorado Consumer Protection Act, Colo. Rev. Stat. §§ 6-1-101, *et seq.*; and  
 7 New York General Business Law, N.Y. Gen. Bus. Law §§ 349, *et seq.*, and damages. Further,  
 8 Defendant acted reasonably at all times, and thus, Plaintiff will be unable to prove negligence.  
 9 Plaintiffs did not suffer any damages. Plaintiffs cannot show any breach of contract or fiduciary  
 10 duty, as Defendant was never a fiduciary. Finally, Plaintiffs will be unable to show any intentional  
 11 act on the part of Defendant. A Joinder Complaint has been filed against the threat actor  
 12 responsible for the criminal act. Nonstop was a victim of Conor Brian Fitzpatrick.

13           **XII. SETTLEMENT AND ADR**

14           The Parties will meet and confer in compliance with Civil Local Rule 16-8 and ADR Local  
 15 Rule 3-5. In the event the Parties agree that ADR is appropriate, the Parties will select private ADR  
 16 and promptly inform the Court. The Parties shall complete private mediation and file a report  
 17 thereof no later than May 31, 2024.

18           **XIII. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES**

19           The Parties did not consent to referral to a magistrate for all purposes.

20           **XIV. OTHER REFERENCES**

21           At this time, the Parties do not believe the case to be suitable for reference to binding  
 22 arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.

23           **XV. NARROWING OF ISSUES**

24           At this time, the Parties have not identified any issues that can be narrowed by agreement  
 25 or motion but remain open to meeting and conferring regarding the potential narrowing of issues  
 26 once this case proceeds beyond the pleading stage.

27           **XVI. EXPEDITED TRIAL PROCEDURE**

28           At this time, the Parties do not believe the case is suitable for expedited trial.

1      **XVII. SCHEDULING**

2      **JOINT POSITION**

4	Event	Proposed Deadline
5	Deadline to amend/add parties	February 20, 2024
6	Class Primary Expert Disclosures	February 12, 2024
7	Class Rebuttal Expert Disclosures	April 1, 2024
8	Last day to complete ADR and file report thereof	May 31, 2024
9	Last day to file class <i>Daubert</i> motions	July 24, 2024
10	Last day to file Motion for Class Certification	September 1, 2024
11	Opposition to Motion for Class Certification	November 1, 2024
12	Reply in Support of Motion for Class Certification	December 1, 2024
13	Hearing on Motion for Class Certification	December 19, 2024
14	Simultaneous Merits Expert Disclosures	February 7, 2025
15	Discovery cutoff	March 28, 2025
16	Last day to hear file Motions for Summary Judgment and Merits <i>Daubert</i> Motions	May 15, 2025
17	Last day to file Oppositions to Dispositive and Merits <i>Daubert</i> motions	June 16, 2025
18	Last day to file replies to Dispositive and Merits <i>Daubert</i> motions	August 8, 2025
19	Final Pretrial Conference	September 11, 2025
20	Trial	September 22, 2025

21      **XVIII. TRIAL**

22      **JOINT POSITION**

23      The Parties request trial by jury. At this time, the Parties anticipate approximately ten days  
24      of trial.

## **XIX. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS**

The Parties will file a "Certification of Interested Entities or Persons" prior to the case management conference, reporting no such interested parties other than those named.

## **XX. PROFESSIONAL CONDUCT**

5 All attorneys of record are familiar with the District's Guidelines for Professional Conduct.

## **XXI. OTHER**

The Parties respectfully request the Court instate the joint scheduling deadlines articulated in the Joint Case Management Statement filed on December 11, 2023 (ECF No. 67).

Dated: January 17, 2024

COLE & VAN NOTE

By: s/ Scott Edward Cole  
Scott Edward Cole, Esq.

Dated: January 17, 2024

**MILBERG COLEMAN BRYSON  
PHILLIPS GROSSMAN, PLLC**

By: s/ John Nelson  
John Nelson, Esq.

*Plaintiffs' Interim Co-Lead Class Counsel*

Dated: January 17, 2024

CIPRIANI & WERNER PC

By: s/Jill H. Fertel  
Jill H. Fertel, Esq.

*Counsel for Defendant*

1      *Additional Counsel for Plaintiffs and Putative Class*

2      M. Anderson Berry (SBN 262879)  
3      Gregory Haroutunian (SBN 330263)  
4      **CLAYEO C. ARNOLD,  
A PROFESSIONALCORP**  
5      865 Howe Avenue  
6      Sacramento, CA 95825  
7      Telephone: (916) 239-4778  
8      Facsimile: (916) 924-1829  
9      Email: aberry@justice4you.com  
10     Email: gharoutunian@justice4you.com

11     Brittany Resch (*Pro Hac Vice*)  
12     Raina Challeen Borrelli (*Pro Hac Vice*)  
13     **TURKE & STRAUSS LLP**  
14     613 Williamson Street, Suite 201  
15     Madison, WI 53703  
16     Telephone: (608) 237-1775  
17     Facsimile: (608) 509-4423  
18     Email: brittanyr@turkestrauss.com  
19     Email: raina@turkestrauss.com

20     Terence R. Coates  
21     (*Pro Hac Vice* Forthcoming)  
22     Dylan J. Gould (*Pro Hac Vice* Forthcoming)  
23     **MARKOVITS, STOCK & DEMARCO,  
LLC**  
24     119 E. Court Street, Suite 530  
25     Cincinnati, OH 45202  
26     Phone: (513) 651-3700  
27     Fax: (513) 665-0219  
28     Email: tcoates@msdlegal.com  
29     Email: dgould@msdlegal.com

30     COLE & VAN NOTE  
31     ATTORNEYS AT LAW  
32     555 12TH STREET, SUITE 2100  
33     OAKLAND, CA 94607  
34     TEL: (510) 891-9300

## ATTESTATION

I, Scott Edward Cole, hereby attest, pursuant to N.D. Cal. Civil Local Rule 5-1(h)(3), that concurrence to the filing of this document has been obtained from each signatory.

*s/ Scott Edward Cole*

Scott Edward Cole, Esq.

## **CERTIFICATE OF SERVICE**

I hereby certify that, on January 17, 2024, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify the foregoing document is being served today on all counsel of record in this case via transmission of Notice of Electronic Filing generated by CM/ECF and on counsel in the related cases to their respective emails per the below service list.

*s/ Scott Edward Cole*

---

Scott Edward Cole, Esq.

**COLE & VAN NOTE**  
ATTORNEYS AT LAW  
555 12TH STREET, SUITE 2100  
OAKLAND, CA 94607  
TEL: (510) 891-9800